



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: OCTOBER 12, 2022

IN THE MATTER OF:

Appeal Board No. 624386

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination holding that the claimant's benefit rate would be \$143.00 and in so doing, denying the claimant's request to use the wages earned in the alternate base period in calculating the weekly benefit. The claimant requested a hearing. The Commissioner of Labor objected that the hearing request was not made within the time allowed by statute.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. By decision filed June 10, 2022 (), the Administrative Law Judge granted the claimant's application to reopen 322-01506, sustained the Commissioner of Labor's timeliness objection, and continued in effect the initial determination.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the Commissioner of Labor's timeliness objection and continued in effect the initial determination.

Our review of the record reveals that the case should be remanded to hold a further hearing. The Judge should have adjourned the hearing to afford the Commissioner of Labor an opportunity to appear and to testify based on the claimant's requests of April 4, 2020, and May 21, 2020 to use his alternate base period regarding the March 27, 2020 monetary initial determination. The Board has determined to afford the Commissioner of Labor such opportunity to present evidence.

At the further hearing, the Commissioner of Labor should produce a witness with first-hand knowledge to testify regarding the claimant's requests to use his alternate base period, the process that is followed when such a request is made, the Department's records of when and how the claimant made such requests (writing, secure message, telephone or otherwise), the Department's responses to such requests, and what transpired as to the claimant's particular requests of April 4, 2020 and May 21, 2020.

The Department should produce any documents, letters, facsimile, telephone requests, and secure messages requesting the use of claimant's alternate base period, as well as copies of the Department of Labor's responses, if any, to such requests. The Department should also produce telephone records as to any and all conversations had with the claimant for the time period from April 2020, through September 2020.

If the Administrative Law Judge accepts claimant's testimony regarding his April 4, 2020 submission requesting the use of his alternate base period, the Administrative Law Judge will then render a decision as to whether the claimant has sufficient wages in his alternate base period to have established a higher benefit rate as to his claim of March 2020.

All relevant documentary evidence shall be entered into the record after the parties are afforded an opportunity for objection.

Now, based on all the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, insofar as it sustained the Commissioner of Labor's objection as to timeliness and continued in effect the initial determination, be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the rescinded issues, ONLY, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER